

**IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
CHARLOTTE DIVISION**

**CIVIL NO. 3:07CV44
(3:01CR212)**

MICHAEL C. GOODSON,)	
)	
Petitioner,)	
)	
Vs.)	<u>ORDER OF DISMISSAL</u>
)	
UNITED STATES OF AMERICA,)	
)	
Respondent.)	
<hr style="width:40%; margin-left:0"/>)	

THIS MATTER is before the Court on the Petitioner's motion to vacate, set aside, or correct judgment pursuant to 28 U.S.C. § 2255. Because the Court determines this is a successive petition and it has no jurisdiction to consider same, it is dismissed.

This case's procedural history is detailed in the Court's Memorandum and Opinion adjudicating the Petitioner's § 2255 filed in July 2003 and will not be further recited here. ***See, Goodson v. United States, Civil No. 3:03CV369, Memorandum and Order, filed September 29, 2003, at 2.*** The Petitioner alleges in this motion that the Court imposed his sentence

using an incorrect application of the Sentencing Guidelines. **See Petition, at 5.**

As amended by the AEDPA [Antiterrorism and Effective Death Penalty Act], § 2255 bars successive applications unless they contain claims relying on

(1) newly discovered evidence that, if proven and viewed in light of the evidence as a whole, would be sufficient to establish by clear and convincing evidence that no reasonable factfinder would have found the movant guilty of the offense; or

(2) a new rule of constitutional law, made retroactive to cases on collateral review by the Supreme Court, that was previously unavailable.

• • •

In addition to enacting the substantive standards we have just described, the AEDPA modified the procedures governing successive collateral review applications. As a result of these modifications, a prisoner seeking to file a successive application in the district court must first obtain authorization from the appropriate court of appeals.

• • •

In the absence of pre-filing authorization, the district court lacks jurisdiction to consider an application containing abusive or repetitive claims.

***United States v. Winestock*, 340 F.3d 200, 204-05 (4th Cir. 2003).** “The ultimate question here is whether [Petitioner’s] motion for [relief] should [be] treated as a successive collateral review application.” ***Id.*, at 203.**

As previously noted, the Petitioner has already filed one motion pursuant to § 2255.¹ The undersigned has no jurisdiction to entertain a second one unless it has been certified “by a panel of the appropriate court of appeals[.]” **28 U.S.C. § 2255**. Thus, if this motion is a successive petition, it must be presented in the first instance to the Fourth Circuit Court of Appeals. ***Winestock, supra*, at 205**. As a result, the undersigned has no jurisdiction to entertain any of the claims presented.

IT IS, THEREFORE, ORDERED that the Petitioner’s motion is a successive motion pursuant to 28 U.S.C. § 2255 and is hereby **DISMISSED** for lack of jurisdiction.

Signed: February 13, 2007



Lacy H. Thornburg
United States District Judge



¹The Court is not considering Petitioner’s § 2255 motion dismissed without prejudice in May 2003.